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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 KHADEMI DAVOOD, ) Case No. 1:21-cv-01394-SAB (PC)  
12 Plaintiff, )  
13 v. ) ORDER TO SHOW CAUSE WHY ACTION  
14 JIMMANZ, et al., ) SHOULD NOT BE DISMISSED FOR FAILURE  
15 Defendants. ) TO EXHAUST THE ADMINISTRATIVE  
16 ) REMEDIES  
17 ) (ECF No. 1)  
18 )  
19 )  
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22 )

18 Plaintiff Khademi Davood is proceeding *pro se* and *in forma pauperis* in this civil rights action  
19 pursuant to 42 U.S.C. § 1983.

20 Currently before the Court is Plaintiff's complaint, filed September 17, 2021.

21 **I.**

22 **SCREENING REQUIREMENT**

23 The Court is required to screen complaints brought by prisoners seeking relief against a  
24 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court  
25 must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous  
26 or malicious," that "fail[] to state a claim on which relief may be granted," or that "seek[] monetary  
27 relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B); see also 28  
28 U.S.C. § 1915A(b).

1 A complaint must contain “a short and plain statement of the claim showing that the pleader is  
2 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
3 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do  
4 not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550  
5 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate that each defendant personally participated  
6 in the deprivation of Plaintiff’s rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

7 Prisoners proceeding *pro se* in civil rights actions are entitled to have their pleadings liberally  
8 construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th  
9 Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be facially plausible, which  
10 requires sufficient factual detail to allow the Court to reasonably infer that each named defendant is  
11 liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962,  
12 969 (9th Cir. 2009). The “sheer possibility that a defendant has acted unlawfully” is not sufficient, and  
13 “facts that are ‘merely consistent with’ a defendant’s liability” falls short of satisfying the plausibility  
14 standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

## 15 II.

### 16 EXHAUSTION OF ADMINISTRATIVE REMEDIES

17 Pursuant to the Prison Litigation Reform Act of 1995, “[n]o action shall be brought with respect  
18 to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any  
19 jail, prison, or other correctional facility until such administrative remedies as are available are  
20 exhausted.” 42 U.S.C. § 1997e(a). Prisoners are required to exhaust the available administrative  
21 remedies prior to filing suit. Jones v. Bock, 549 U.S. 199, 211 (2007); McKinney v. Carey, 311 F.3d  
22 1198, 1199-1201 (9th Cir. 2002). Exhaustion is required regardless of the relief sought by the prisoner  
23 and regardless of the relief offered by the process, Booth v. Churner, 532 U.S. 731, 741 (2001), and the  
24 exhaustion requirement applies to all suits relating to prison life, Porter v. Nussle, 435 U.S. 516, 532  
25 (2002).

26 Prisoners are required to exhaust before bringing suit. Booth, 532 U.S. at 741. From the face  
27 of Plaintiff’s Complaint, it is clear that Plaintiff filed suit prematurely and in such instances, the case  
28 may be dismissed. Albino v. Baca, 747 F.3d 1162, 1169 (9th Cir. 2014) (en banc) (where failure to

1 exhaust is clear from face of complaint, case is subject to dismissal for failure to state a claim under  
 2 Rule 12(b)(6)); Wyatt v. Terhune, 315 F.3d 1108, 1120 (9th Cir. 2003) (“A prisoner’s concession to  
 3 nonexhaustion is a valid ground for dismissal....”) (overruled on other grounds by Albino, 747 F.3d at  
 4 1168-69); see also Nordstrom v. Ryan, 762 F.3d 903, 908 (9th Cir. 2014) (“Dismissal for failure to  
 5 state a claim under § 1915A ‘incorporates the familiar standard applied in the context of failure to  
 6 state a claim under Federal Rule of Civil Procedure 12(b)(6).’ ”) (quoting Wilhelm v. Rotman, 680  
 7 F.3d 1113, 1121 (9th Cir. 2012)).

8       There are currently two levels of review within the California prison administrative grievance  
 9 process. Cal. Code Regs. tit. 15, §§ 3482, 3483, 3486. Generally, “[c]ompletion of the review process  
 10 by the Office of Appeals constitutes exhaustion of all administrative remedies available to a claimant  
 11 within the Department.” Cal. Code Regs. tit. 15, § 3486. The Supreme Court has held that there are no  
 12 “special circumstances” exceptions to the exhaustion requirement. Ross v. Blake, 578 U.S. 1174, 136  
 13 S.Ct. 1850, 1856 (2016). However, the one significant qualifier is that “the remedies must indeed be  
 14 ‘available’ to the prisoner.” Id. As described by the Ross Court:

15       [A]n administrative procedure is unavailable when (despite what regulations or guidance  
 16 materials may promise) it operates as a simple dead end—with officers unable or consistently  
 17 unwilling to provide any relief to aggrieved inmates. See 532 U.S., at 736, 738, 121 S.Ct.  
 18 1819. . . . Next, an administrative scheme might be so opaque that it becomes, practically  
 19 speaking, incapable of use. . . . And finally, the same is true when prison administrators thwart  
 20 inmates from taking advantage of a grievance process through machination, misrepresentation,  
 or intimidation. . . . As all those courts have recognized, such interference with an inmate's  
 pursuit of relief renders the administrative process unavailable. And then, once again, §  
 1997e(a) poses no bar.

21 Id. at 1859-60.

22       It is clear from the face of Plaintiff’s complaint that he has not exhausted administrative remedies  
 23 pursuant to the Prison Litigation Reform Act, 41 U.S.C. § 1997 (e)(a), before filing this lawsuit.  
 24 On the form complaint, in response to the question whether the administrative remedy process is  
 25 complete, Plaintiff states “no due to heavy duty medications.” (Compl. at 2.) Plaintiff further states,  
 26 “the records in (DSH) was not given and destroyed by staff.” (Id.) Thus, Plaintiff concedes that the  
 27 administrative remedies were not completed prior to filing the instant action. Further, Plaintiff has failed  
 28 to demonstrate that any of the circumstances set forth in Ross apply. Accordingly, Plaintiff shall be

1 required to show cause why this case should not be dismissed, without prejudice, for failure to exhaust  
2 remedies prior to filing suit.

3 **III.**

4 **ORDER**

5 Based on the foregoing, it is HEREBY ORDERED that:

- 6 1. Plaintiff shall show cause in writing within twenty-one (21) days of the date of service  
7 of this order as to why this case should not be dismissed for Plaintiff's failure to exhaust  
8 administrative remedies before filing suit; and  
9 2. The failure to respond to this order will result in a recommendation to a district judge to  
10 dismiss this action without prejudice.

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12 IT IS SO ORDERED.

13 Dated: September 24, 2021



14 UNITED STATES MAGISTRATE JUDGE  
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